

Remarks

Claims 1-23 are pending in the application. Claims 1-23 are rejected. All rejections are respectfully traversed.

Claims 1 and 22 are amended to correct clerical errors. No new subject matter is added.

Claims 1, 3, 4, 19 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Geaghan et al., U.S. Patent Application Publication No. 2003/0063073 (Geaghan).

Claims 1 and 23 have been amended to more clearly indicate that, when multiple users touch the touch sensitive surface, the claimed sequences of touch samples for each user are generated simultaneously. As the Examiner states, Geaghan fails to teach the claimed simultaneous generation of a plurality of sequences of touch samples and, therefore, cannot anticipate the claimed invention.

More important, however, is the issue of the Examiner's arguments concerning the term "conflict" as used in the claims. Here, the Applicants strongly feel that they must point out that the Examiner is abusing the "broadest reasonable interpretation" standard for claim interpretation. While it is true that the Examiner must, and should, interpret claim limitations broadly, this is not *carte blanche* permission to stretch those interpretations unnecessarily. The standard that must be employed is limited in two very

real and distinct ways. First, claim limitations “must be given their plain meaning unless the plain meaning is inconsistent with the specification.” see MPEP 2111.01 (emphasis added). Second, “the pending claims must be given their broadest reasonable interpretation consistent with the specification.” see MPEP 2111 (emphasis added). Applicants believe that the Examiner has ignored both of these requirements and has interpreted the elements of the claims unreasonably broadly in order to make Geaghan fit into his rejection.

According to The American Heritage Dictionary, Second College Edition, the term “conflict” means, *inter alia*, “the opposition or simultaneous functioning of mutually exclusive impulses, desires or tendencies.” In fact, this is the meaning of the term as used throughout the Applicants’ specification.

At pages 2 and 3, paragraphs [07]-[10], Applicants state:

“As long as different users are pointing at different displayed items this is usually not a problem. The application can easily determine the operations to be performed for each user using traditional techniques. However, interesting new difficulties arise when multiple users indicate conflicting operations for the same item. For example, one user attempts to drag a displayed document to the left, while another user attempts to drag the same document to the right. Up to now, user interfaces have not had to deal with conflicting commands from multiple simultaneous users manipulating displayed items.

In order to take full advantage of a multi-user interface, as described above, there is a need for a system and method that can resolve such conflicts.

Enabling multiple users to simultaneously operate an application gives rise to several types of conflicts. For instance, one user could “grab” an electronic document while another user is interacting with that document. Alternatively, one user attempts to alter an application setting that adversely impacts activities of other users.

Typically prior art solutions use ownership levels and access privileges to ‘resolve’ conflicts. However, such techniques either require explicit directions to resolve conflicts, or alternatively, apply arbitrary and inflexible rules that may not reflect a dynamic and highly interactive situation, as are now possible with graphic multi-user interfaces.”

At page 8, paragraph [032], Applicants state:

“It should be noted that multiple touch events from multiple users can be associated with one displayed item at a particular time. For example, two users are both trying to ‘drag’ an item to opposite sides of the table. Competing simultaneous touch events generate conflicts. It is an object of the invention to resolve such conflicts.”

These paragraphs plainly state that the problem addressed by Applicants' invention is not how to differentiate between single touches and multiple touches (as addressed in Geaghan), but rather what to do when multiple users are simultaneously issuing incompatible commands to an application. These are not the same problems and cannot have the same solutions.

The above usage of the term "conflict" is represented in the claims. In lines 10 and 11 of claim 1, each sequence of samples generated when a plurality of users simultaneously touch the touch sensitive surface is associated with a particular item and, in lines 14-16, there are "means for determining a decision with respect to a conflict affecting a next state of the particular item." Clearly, what is claimed is a system that resolves competing directives to a particular item issued by multiple users. This is the essence of conflict resolution, i.e., the problem distinctly and repeatedly presented in the Applicants' specification.

From the above, it should be apparent that the plain meaning of the term "conflict," as used in the claims and consistent with meaning as used in the Applicants' specification, is simultaneous incompatible commands to an application made by multiple users.

Returning to the Examiner's rejections, the plain meaning of the term "conflict" as used by the Applicants simply does not encompass the problem presented and addressed by Geaghan. The problem of phantom touches (i.e., incorrect touch locations arising out of multiple touches to a touch sensitive surface) has absolutely nothing to do with conflict resolution. As was stated

in the previous response, the system of Geaghan would not be able to resolve the conflict of two users trying to move a displayed document. The system of Geaghan would only be able to determine that multiple (unidentified) users were touching the displayed document. This teaches nothing for the problem, i.e., the *conflict*, of what should happen to the displayed document. The claimed system, on the other hand, provides a solution for this circumstance based on the policy of the item. To state that the detection and degeneration of phantom touches as disclosed in Geaghan includes the resolution of conflicts as claimed is to stretch the plain meaning of the term “conflict” in an unreasonable way.

Furthermore, if the Examiner’s interpretation of the term “conflict” included the mere activity of “when two users touch the screen at the same time” as the Examiner states, this would make the term inconsistent with its usage in the Applicants’ specification. A “conflict” occurs when multiple users issue simultaneous incompatible commands to an application. Multiple users touching a touch sensitive surface has no conflict. It is only when those multiple users attempt to perform incompatible operations that a conflict arises, and the only Applicants’ invention, not Geaghan, addresses that situation. Clearly, the Examiner’s interpretation of the term “conflict” is not consistent with Applicants’ specification.

The Examiner will note that this is not an improper importation of a limitation in the specification into the claim. Applicant has merely applied the rules of claim interpretation to the term “conflict” and has found that the

Examiner has unreasonably broadened the plain meaning of the term in a manner inconsistent with the Applicants' specification.

As Geaghan fails to teach the means for determining a decision with respect to a conflict affecting a next state of the particular item according to the events from the plurality of users, the state and the policy as claimed in claims 1 and 23, and as all dependent claims directly or indirectly depend on claim 1, Geaghan cannot anticipate the claimed invention. The Applicants respectfully request that the Examiner withdraw his rejections under 35 U.S.C. 102(e).

Claims 2, 5-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geaghan.

For the above rejections, the Examiner takes official notice that it would have been obvious to "one of ordinary skill" to make the claimed limitations but provides no support for this assertion.

MPEP 2144.03 states:

"It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to

some reference work recognized as standard in the pertinent art. ...; *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ('[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.')."

Conflict resolution in multi-user touch sensitive devices is not capable of such a demonstration. Multi-user touch sensitive technology is a technically difficult area and assertions that certain procedures in the field are well-known or obvious to those skilled in the art must be supported by evidence as required by the MPEP.

Furthermore, MPEP 2144.33 goes on to state:

"If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made."

The Examiner sets forth no explicit reasoning as to why he believes that conflict resolution in multi-user touch sensitive devices is well-known. As such, the Examiner is depriving the Applicants of the ability to challenge his assertions, which is clearly in violation of the directives of the MPEP.

The Examiner is respectfully requested to either provide evidentiary support and to clearly state his rationale in support of his assertions or to withdraw his rejections.

It is believed that this application is now in condition for allowance. A notice to this effect is respectfully requested. Should further questions arise concerning this application, the Examiner is invited to call Applicants' attorney at the number listed below. Please charge any shortage in fees due in connection with the filing of this paper to Deposit Account 50-0749.

Respectfully submitted,
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